

Supreme Court, U. S.

FILED

JAN 27 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-99

OCCIDENTIAL LIFE INSURANCE COMPANY OF CALIFORNIA,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Writ of Certiorari to the United States Court
of Appeals for the Ninth Circuit

BRIEF ON BEHALF OF THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA,
AS AMICUS CURIAE

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INTEREST OF THE AMICUS¹

The Chamber of Commerce of the United States of America [hereinafter "the Chamber"] is a federation consisting of a membership of over thirty-six hundred (3,600) state and local chambers of commerce and professional and trade associations, and a direct business

¹ Written consent of the parties to the filing of this brief has been obtained as required by Supreme Court Rule 42(2).

membership in excess of sixty thousand one hundred (60,100). It is the largest association of business and professional organizations in the United States.

In order to represent its members' views on questions of importance to their vital interests and to render such assistance as it can to this Court's deliberations in such areas, the Chamber has frequently participated as *amicus curiae* in a wide range of significant fair employment matters before this Court. *E.g.*, *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Geduldig v. Aiello*, 417 U.S. 484 (1974); *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

The central issue in this case, whether the authority of the Equal Employment Opportunity Commission [hereinafter the "EEOC"] to file suit in the federal district courts pursuant to Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1), is subject to any limitation period, is of major interest to the Chamber's membership. At the present time the EEOC has a backlog of approximately 100,000 charges of employment discrimination.² Pursuant to Section 706(f)(1), each of these many charges has the potential to be turned by EEOC into a civil action in federal district court seeking injunctive and monetary relief on behalf of the charging parties. If the decision of the Ninth Circuit below is affirmed, the EEOC will be sanctioned to bring to federal court these cases based on charges regardless of how many years prior to suit the charge was filed. Accordingly, the very real possibility exists that in such cases respondent employers will be prejudiced in their defense against these stale claims by the unavailability of witnesses or their loss of memory,

² *Daily Labor Report*, No. 167, pp. AA-1 (August 26, 1976), Bureau of National Affairs.

and by the loss or destruction of relevant evidence. Moreover, affirmance of the decision below would seriously impair the right of both charging parties and respondent employers to obtain the efficient and expeditious resolution of charges of employment discrimination to which they are entitled.

Because of the vital and legitimate interest of its members in obtaining the prompt and efficient disposition of employment discrimination charges which may be filed against them, the Chamber respectfully submits the following brief as *amicus curiae*.

SUMMARY OF THE ARGUMENT

In 1972 Congress amended Title VII in an effort to enable the EEOC to more effectively enforce the Act. The situation presented to Congress was that EEOC was experiencing 18-24 month delays in the disposition of charges of employment discrimination. Congress clearly felt that such delays were unacceptable. In order to eliminate such delays, Congress provided EEOC with the right to sue by authority of Section 706(f)(1) of the Act. The legislative history relevant to the adoption of Section 706(f)(1) strongly suggests that the 180 day provision therein was intended to serve as a limitation period on EEOC's right to sue. This conclusion draws additional support from other provisions of the 1972 Amendments which demonstrate that the intent of Congress was to dramatically expedite the disposition of charges of employment discrimination.

If this Court should conclude that the 180 day provision in Section 706(f)(1) does not serve as a limitation period on EEOC's right to sue, previous decisions of this Court dictate that EEOC's right to sue should be subject to application of the most analogous state statute of limitation period. Proper consideration of the Congressional intent in providing EEOC with court en-

forcement power and the fundamental principle of due process justify the application of state limitation periods to EEOC's right to sue. Application of state limitation periods to the EEOC's right to sue is not barred by its status as an agency of the United States or the fact that suits brought by it pursuant to Section 706(f)(1) can be said to be within the general public interest. This Court's decisions support the conclusion that state limitation periods are applicable to a suit by the United States or its agencies on behalf of private individuals even where the action of the United States is in the public interest, if the private individuals could have obtained a determination of their rights without the assistance of the United States.

ARGUMENT

I.

SECTION 706(f)(1) OF TITLE VII IMPOSES A 180 DAY LIMITATION PERIOD ON THE EEOC'S RIGHT TO SUE

In 1972 Congress amended Title VII of the Civil Rights Act of 1964³ by passage of the Equal Employment Opportunity Act of 1972.⁴ The most important change which the 1972 Amendments worked on Title VII was to grant the EEOC the power to file an action in federal district court to seek the elimination of alleged unlawful employment practices where its informal methods of conference, conciliation, and persuasion had been unsuccessful in achieving a resolution satisfactory to the EEOC. This grant of authority to EEOC is set forth in Section 706(f)(1) of Title VII which provides in pertinent part as follows:

³ 42 U.S.C. § 2000e *et seq.* (1964).

⁴ Pub. L. No. 92-261, 86 Stat. 103 (1972).

If within thirty days after a charge is filed with the Commission . . . the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against [the] respondent . . . *if within one hundred and eighty days from the filing of such charge . . . the Commission has not filed a civil action under the Section, the Commission . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge . . . by any person aggrieved by the alleged unlawful employment practice. . . . Upon timely application the Court may, in its discretion, permit the Commission . . . to intervene in such civil action upon certification that the case is of general public importance.* (Emphasis added).

The Chamber urges this Court that proper analysis of the legislative history surrounding the passage of the 1972 Amendments to Section 706(f)(1) and the clear purpose of certain other of those Amendments require the conclusion that Congress intended the 180 day provision italicized above to serve as a limitation period on the EEOC's right to file suit.⁵

⁵ The Chamber is constrained to acknowledge that six circuit courts of appeals which have had the opportunity to pass on the question of whether the 180 day provision imposes a limitation period on the EEOC's right to sue have concluded that it does not. *Equal Employment Opportunity Comm'n v. Duval Corp.*, 528 F.2d 945 (10th Cir. 1976); *Equal Employment Opportunity Comm'n v. Meyer Bros. Drug Co.*, 521 F.2d 1364 (8th Cir. 1975); *Equal Employment Opportunity Comm'n v. E. I. du Pont de Nemours and Co.*, 516 F.2d 1297 (3rd Cir. 1975); *Equal Employment Opportunity Comm'n v. Kimberly-Clark Corp.*, 511 F.2d 1352 (6th Cir. 1975); *Equal Employment Opportunity Comm'n v. Louisville and Nashville R.R.*, 505 F.2d 610 (5th Cir. 1974); *Equal Employment Opportunity Comm'n v. Cleveland Mills*, 502 F.2d 153 (4th Cir. 1974). The Chamber is confident, however, that this Court's independent review of this issue will result in a contrary exercise of judicial reasoning.

A. The Relevant Legislative History

The 1972 Amendments to Title VII authorizing EEOC to file suit to eliminate alleged employment discrimination were the result of the conclusion of Congress that conciliation powers alone were not sufficient to enable EEOC to effectively enforce the Act.⁶ While there was general agreement in Congress that EEOC should be given enforcement powers, a major difference of opinion arose in both Houses of Congress as to what form those enforcement powers should take.⁷ On the one side of the issue were those Congressmen who favored conferring on the EEOC "cease and desist" authority like that possessed by the National Labor Relations Board and certain other federal agencies. On the other side of the issue were those Congressmen who were of the opinion that the most effective enforcement of the substantive provisions of Title VII could be achieved by granting the EEOC the right to sue in federal district court. The principle basis of disagreement between the proponents of the differing methods of enforcement was which approach would be more effective and most expeditious.

The situation presented to Congress was that the EEOC had an enormous backlog of charges on which it was taking an average of 18 to 24 months to complete action.⁸ Congress was appalled by this excessive delay in processing cases. As Senator Dominick expressed it:

I do not care who it may be, or how long they may have been claiming discrimination, if they have

⁶ H.R. Rep. No. 92-238, 92d Cong., 1st Sess. (1971); U.S. Code Cong. & Admin. News, p. 2139 (1972).

⁷ H.R. Rep. No. 92-238 (Minority Views on H.R. 1746), 92d Cong., 1st Sess. (1971); U.S. Code Cong. & Admin. News, p. 2168 (1972); S. Rep. No. 92-415, 92d Cong., 1st Sess. (1971).

⁸ This was the testimony of EEOC Chairman Brown in April, 1971, before the House Committee on Appropriations. U.S. Code Cong. & Admin. News, p. 2170 (1972).

to wait 20 months before they can even find out whether or not the Commission feels that the charge is valid all that one can say is that justice delayed is justice denied.

118 Cong. Rec. 593 (January 20, 1972).

The supporters of court enforcement power for the EEOC viewed that approach as the only viable method for reducing the considerable delay in processing charges. As it was expressed by proponents of court enforcement in the House, it was feared that granting EEOC cease and desist authority would merely add to the already excessive delay rather than reduce it:

A close examination of the time factors involved in processing charges before the National Labor Relations Board (which was the model for formulating the enforcement powers given to the EEOC by the Committee bill) and the district courts exclusively establishes that quicker relief can be achieved when the district court approach is utilized.

* * *

[I]t can easily take 2 and 1/2 years from the time a worker walks into a regional Labor Board office with a charge that he has been discharged illegally until the time a court of appeals finally issues an order that he be reinstated to his job with back pay.

* * *

When the time factors are added up, the 18-24 month backlog currently existing at EEOC, the time needed for an administrative proceeding and review by the Commission, plus the 630 day figure currently required to get court enforcement (using the NLRB figure), 3 and 1/2 to 4 years would appear to be a more correct approximation of the time involved in getting enforcement through the administrative cease and desist approach.

* * *

In striking contrast, . . . ten months was the median time interval from issue to trial for non-jury trials completed in United States District Courts in 1970. . . . (Emphasis added).

H.R. Rep. 92-238, 92nd Cong., 1st Sess. (1971) (Minority Views on H.R. 1746); U.S. Code Cong. & Admin. News, p. 2169 (1972).

Similar concern was subsequently expressed by Senator Dominick and other senators who favored court enforcement power for the EEOC:

Consider these facts. I referred to them yesterday and they are worthwhile repeating today. Chairman Brown of the EEOC testified that as of June 30, 1971, the Commission had a backlog of 32,000 cases. The EEOC anticipated a caseload of 32,000 new cases in fiscal year 1972 and 45,000 in fiscal year 1973. As of February 1971—the most recent data we have been able to get—the EEOC complaints required 18 to 24 months for disposition.

* * *

To this already substantial backlog one must add the impact of the more complex and time consuming cease-and-desist procedure. . . .

* * *

If Court enforcement is adopted the district courts will be faced with the same expanded caseload, but they are substantially better adapted to cope with the increase. . . .

* * *

Whereas the EEOC backlog is from 18 to 24 months, the median time interval from issue to trial in U.S. district court in 1970 according to the annual report of the Director of the Administrative Office of the U.S. Courts was 10 months. (Emphasis added).

118 Cong. Rec. 697 (January 21, 1972).⁹

The proponents of cease and desist authority for EEOC were equally unsatisfied with EEOC's 18-24 month delays in the processing of charges. They doubted, however, that the universally desired expeditious resolution of charges could be achieved through court enforcement.¹⁰

Thus, although the supporters of cease and desist authority and court enforcement power disagreed as to which enforcement approach would be most efficient and expeditious, it is clear they were in agreement that something had to be done to reduce EEOC's excessive delays in handling cases. When considered against this prevailing mood in the Congress at the time of the passage of the 1972 Amendments, there can be no doubt that Congress intended that the court enforcement powers which were given to EEOC in Section 706(f)(1) would be effectively and expeditiously utilized. Rather than affording EEOC a right to sue which was interminable, it is evident the Congress meant for EEOC to exercise its newly gained suit powers within a limited time.

The limitation period which Congress imposed on EEOC's right to sue is marked by the expiration of the 180 day period set forth in Section 706(f)(1). This conclusion is supported by review of certain statements made by Senators Dominick and Javits, leaders on opposite sides of the court enforcement issue, in which it was acknowledged that the court enforcement proposal provided an express limitation on the EEOC's right to sue.

On February 7, 1972, Senator Dominick stated with regard to the court enforcement proposal that:

⁹ See also 118 Cong. Rec. 699-700 (Remarks of Senator Fannin); 118 Cong. Rec. 732 (Remarks of Senator Brock); 118 Cong. Rec. 944 (Remarks of Senator Talmadge).

¹⁰ 118 Cong. Rec. 941-42 (Remarks of Senator Williams).

The Amendment contains several cosmetic differences from the original Amendment *as well as one substantial change which reduces the time period within which the Commission may file a civil action against the respondent* from 180 days to 150 days from the time the Commission first issues its formal charge. (Emphasis added).

118 Cong. Rec. 1307 (February 7, 1972). Approximately one week later, Senator Javits, discussing another enforcement proposal which contained a similar time sequence commented:

Let us understand that we are dealing with a period of approximately 150 days, *that this is the allowable time* for the Commission to move into a given situation. The first thirty days represent an effort to conciliate, making a total of six months. So that is the Commission operation. *At the end of six months it becomes plenary.* (Emphasis added).

118 Cong. Rec. 1800 (February 15, 1972). Significantly these explanations of the import of the 180 day provision which was contained in the final version of Section 706(f)(1) were never challenged as erroneous.

The explicit explanations of the purpose of the 180 day provision in the court enforcement proposal provided by Senators Dominick and Javits are not clouded, as some have claimed, by an earlier exchange between these senators concerning whether the Amendments should provide that the EEOC "shall" or "may" file suit after thirty days.¹¹ That discussion arose as a result of an amendment Senator Javits introduced to Senator Dominick's court enforcement proposal which would have revised that proposal to provide that the EEOC "shall" bring suit within thirty days after a charge was filed. Senator Dominick objected to this requirement, in that

¹¹ 118 Cong. Rec. 1068 (January 25, 1972).

he felt it did not afford EEOC sufficient time to attempt to secure a voluntary conciliation agreement.¹²

Senator Javits explained that he offered his amendment in an attempt to conform Senator Dominick's court enforcement proposal to the original Senate bill granting EEOC cease and desist authority which required the EEOC to initiate that enforcement procedure by issuing a complaint if it could not obtain voluntary compliance.¹³

While Senator Javits was willing to agree to replace "shall" with "may", he pointed out that:

[I]f we change the word "shall" to "may", *do we not have to have some cut off time as far as the Commission is concerned*, with respect to its exercise of that discretion in bringing a civil action. . . . (Emphasis added).

118 Cong. Rec. 1069 (January 25, 1972). In response, Senator Dominick agreed that a "cut off time" was necessary as to the EEOC's right to sue, but expressed his concern that it not be made shorter than the 180 day period already provided for in his proposal:

We can shorten the 180-day private filing restriction as far as I am concerned, but I think we should keep in mind that this is a Commission which has been appointed for the purpose of trying to solve any employment discrimination that there might be, and consequently, I do not think we should assume

¹² "Without trying to be too technical or difficult about it, I believe that 'shall' defeats the purpose of the 30-day delay which was simply designed to try to get, as they say in the delivery business, 'a burr under the tail' of the parties. But I do not see why we should require them within thirty days to bring suit. They might be able to accomplish voluntary compliance within forty days, or it might take thirty-two days, but under the language of this amendment what happens if they do not file suit within thirty days? Then what do we do?" 118 Cong. Rec. 1068 (January 25, 1972) (Remarks of Senator Dominick).

¹³ 118 Cong. Rec. 1069 (January 25, 1972).

that they will not take action where there is a clear case. Problems will arise where there are grey areas, or where they are not sure whether they have substantial evidence to support a case. Under those circumstances, it would seem to me that we should give them more time. If we want to say 90 days from the filing of such a charge, or on the expiration of any period, instead of 180 or 120, that is all right with me. If the Senator would do that, then we are changing the time table which the Committee has already worked out in the process of trying to determine what should be done with enforcement procedures.

118 Cong. Rec. 1069 (January 25, 1972).

Despite Senator Dominick's choice of the words "private filing restriction" to identify the 180 day period, it is clear that by his statement he meant to point out to Senator Javits that this time period satisfied the Senator's concern that the Amendments contain a "cut off time" on EEOC's right to sue. Accordingly, rather than cloud their subsequent clear statements to the effect that EEOC's rights to sue power was to be limited to 180 days, *supra* p. 10, their discussion of January 25, 1972, demonstrates that they were both keenly aware of the necessity for and the existence of a definite limitation period on the EEOC's right to sue.

The Chamber submits that the foregoing review of the legislative history relevant to Section 706(f)(1) strongly suggests that Congress intended the 180 day provision therein to serve as a federal statute of limitation to EEOC's right to sue.

B. Other Relevant Provisions of the Amendments

Additional support for the conclusion that Congress intended the 180 day provision in Section 706(f)(1) to serve as a limitation period on the EEOC's right to sue can be drawn from certain of the other changes that it

made to Title VII by the 1972 Amendments in order to expedite the disposition of charges. For instance, despite its obvious awareness at the time of passage of the Amendments that it was not uncommon for EEOC to require a year or more to make a determination of "reasonable cause" with respect to a charge, Congress provided in Section 706(b) of the Act that:

The Commission shall make its determination of reasonable cause as promptly as possible and, so far as practicable, *not later than 120 days from the filing of the charge.* . . . (Emphasis added).

42 U.S.C. § 2000e-5(b).

The determination of Congress that EEOC should henceforth complete its "reasonable cause" determination process within a time frame that bore no relation to its then existing practices effectively serves to nullify the assertion that in view of its knowledge of EEOC's backlog of cases, Congress can not be presumed to have limited EEOC's right to sue to 180 days. As is evident from the legislative history of the 1972 Amendments, Congress believed that significant changes were necessary in EEOC's case handling procedures if elimination of excessive delays in resolving charges was to be accomplished.

As was expressed by Senator Brock during the Senate's consideration of court enforcement powers for the EEOC.

The present EEOC complaint disposition requires 18 to 24 months. . . . *In restructuring Government agencies such as the EEOC it is incumbent upon Congress to show some imagination to fashion procedures that will provide for a speedy resolution of business.* (Emphasis added).

118 Cong. Rec. 732 (January 21, 1972).

Congress clearly accepted this challenge to demonstrate some imagination by specifying that reasonable cause

determinations should normally be made within 120 days from the filing of a charge. Plainly no purpose would be served in exhorting the EEOC to reach a reasonable cause determination within 120 days if the EEOC was not required to act on that determination within a reasonable time frame, such as within the next 60 days for a total of 180 days from the filing of the charge. In view of the action of Congress with regard to expediting the "reasonable cause" determination process, it is illogical to presume that Congress did not similarly intend some limitation on the time within which EEOC had to decide whether to file an action on a charge.

Other provisions of the Amendments which point strongly to the conclusion that Congress intended that EEOC should exercise its right to sue within 180 days are Sections 706(f)(4) and (5), 42 U.S.C. § 2000e-5(f)(4) and (5). These provisions address the duties of the federal district courts in handling cases brought pursuant to Section 706(f)(1). In pertinent part they provide that:

- (4) It shall be the duty of the chief judge of the district . . . immediately to designate a judge in each district to hear and determine the case.

. . .

and,

- (5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

The unmistakable command of these provisions is that Title VII cases are to receive the most expeditious handling possible in the federal district courts so that claimants may receive a speedy determination of their rights. This expedited procedure in the federal courts would appear to be fruitless, however, unless Congress intended EEOC to be constrained to speedily determine, within

180 days, those charges which it should pursue in the district courts. For if, as it claims, the EEOC is entitled to an interminable time within which to exercise its right to sue, precious little is gained by having the federal courts afford cases brought by EEOC expedited handling. It is obvious, therefore, that the intended purpose of the above provisions is only accomplished if the EEOC is likewise required to act speedily by exercising its right to sue within 180 days.

In view of the undeniable congressional objective to expedite the disposition of charges under Title VII, as is evidenced by the provisions discussed above and the previously discussed legislative history relevant to the adoption of Section 706(f)(1), it should appropriately be determined that Congress fully intended the 180 day provision found in Section 706(f)(1) to serve as a limitation period on EEOC's right to sue.

II.

IF SECTION 706(f)(1) IS FOUND NOT TO STATUTORILY LIMIT THE EEOC'S RIGHT TO SUE TO 180 DAYS, THE MOST ANALOGOUS STATE STATUTE OF LIMITATION PERIOD IS APPLICABLE

Should the Court determine that Section 706(f)(1) of Title VII does not provide a limitation on the EEOC's right to sue beyond 180 days after the filing of a charge of employment discrimination, it does not follow that the Court should conclude that the EEOC's right to sue is interminable. Congress has enacted many federal rights of action without providing a limitation period on their enforcement and this Court has uniformly held with respect to such rights of action that they should be governed by the most analogous statute of limitations provided by the applicable state law:

Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975) (Civil Rights Act of 1870);

Autoworkers v. Hoosier Cardinal Corp., 383 U.S. 696, 701-705 (1966) (Labor Management Relations Act);

Cope v. Anderson, 331 U.S. 461, 463 (1947) (National Bank Act);

O'Sullivan v. Felix, 233 U.S. 318, 322-324 (1914) (Civil Rights Act of 1871);

Chattanooga Foundry Co. v. Atlanta, 203 U.S. 390, 397 (1906) (Sherman Antitrust Act);¹⁴

Campbell v. Haverhill, 155 U.S. 610, 613-618 (1895) (Patent Act).

This Court's lead in applying state statutes of limitation to federally created rights of action without an applicable federal limitation period has, in turn, been followed by the lower federal courts on numerous occasions:

Equal Employment Opportunity Comm'n v. Griffin Wheel Co., 511 F.2d 456, 458-459 (5th Cir. 1975);

United States v. Georgia Power Co., 474 F.2d 906, 923 (5th Cir. 1973) (Civil Rights Act of 1964);

Englander Motors Inc. v. Ford Motor Co., 293 F.2d 802, 804 (6th Cir. 1961) (Clayton Antitrust Act);

Bufalino v. Michigan Bell Telephone Co., 404 F.2d 1023, 1028 (6th Cir. 1968), *cert. denied*, 394 U.S. 987 (1969) (Communications Act of 1934);

Esplin v. Hirschi, 402 F.2d 94, 101 (10th Cir. 1968), *cert. denied*, 394 U.S. 928 (1969) (Investment Company Act of 1940);

Sewell v. Grand Lodge of Inter. Ass'n of Machinists and Aerospace Workers, 445 F.2d 545, 548-549 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972) (Labor Management Reporting and Disclosure Act of 1959);

¹⁴ In 1955, Congress enacted a federal statute of limitations applicable to suits under the antitrust laws. 15 U.S.C. Sections 15(b) and 16.

Jones v. Trans World Airlines, Inc., 495 F.2d 790, 799 (2nd Cir. 1974) (Railway Labor Act);

Richardson v. MacArthur, 451 F.2d 35, 39 (10th Cir. 1971);

Douglass v. Glen E. Hinton Investments, Inc., 440 F.2d 912, 914 (9th Cir. 1971);

Klein v. Bower, 421 F.2d 338, 343 (2nd Cir. 1970);

Morgan v. Koch, 419 F.2d 993, 996-997 (7th Cir. 1969) (Securities Exchange Act of 1934).

A. Ample Justification Exists For Subjecting EEOC's Right to Sue to the Most Analogous State Limitation Period.

Barring a determination that EEOC's right to sue pursuant to Section 706(f)(1) is limited to 180 days, proper consideration of the intent of Congress in granting the EEOC court enforcement power and of the fundamental principle of due process dictate the addition of EEOC's right to sue to the list of federal rights of action which are governed by the most analogous state limitation period.

The debates leading up to the grant of court enforcement power to the EEOC indicate that it was the intent of Congress that this grant would result in the expeditious disposition of discrimination charges to the mutual benefit of both charging parties and respondent employers:

Mr. Chairman, I urge support of the Erlenborn-Mazzoli substitute which would give the Commission the right to go into court, resulting in fairness to both parties and expeditious, judicial and fair relief. [117 Cong. Rec. 32100 (September 16, 1971) (Remarks of Congressman Erlenborn)].

• • • •

This Amendment protects the rights of both respondents and aggrieved by providing a fair, effective and expeditious resolution of the dispute. [118 Cong. Rec. 698 (January 21, 1972) (Remarks of Senator Dominick)].

* * *

As I pointed out effective protection of the rights of both the employer and the employee demand a speedy resolution of the dispute. [118 Cong. Rec. 699 (January 21, 1972) (Remarks of Senator Dominick)].

* * *

[C]ourt enforcement offers a more expeditious settlement and a speedy resolution is vitally important to both an aggrieved employee and to a respondent employer. [118 Cong. Rec. 699 (January 21, 1972) (Remarks of Senator Fannin)].

* * *

Court enforcement is speedier and provides greater protection for both plaintiffs and defendant than does administrative enforcement. [118 Cong. Rec. 943 (January 24, 1972) (Remarks of Senator Talmadge)].

It is evident from the overriding concern of Congress that the disposition of charges be expedited that it did not intend that EEOC's resort to court enforcement would be preceded by excessive delay at the administrative level:

I do not feel that it is fair for the government agencies to keep either respondents or complainants waiting years before matters in which they are vitally interested in are disposed. [118 Cong. Rec. 732 (January 21, 1972) (Remarks of Senator Brock)].

To the contrary, so that EEOC's court enforcement would have the desired effect or the enforcement of Title VII, it was contemplated that EEOC would exercise this power swiftly:

The *imminence of court action* coupled with the threat of adverse publicity and immediately enforceable orders will serve as a powerful inducement to voluntary settlements [118 Cong. Rec. 927 (January 24, 1972) (Remarks of Senator Dominick) (emphasis added)].

Faced with this evident concern that prompt action be taken on charges of employment discrimination, it cannot be lightly presumed that Congress intended EEOC's right to sue on a charge to be interminable. Rather, absent a federal limitation period, it is more reasonable to assume that Congress intended that EEOC's right to sue would be limited by state statutes of limitation. Hill, *State Procedural Law in Federal Non-Diversity Litigation*, 69 Harv. L. Rev. 66, 78-81, 91-92 (1955).

Application to the EEOC's right to sue of the most analogous state limitation periods is further justified by due process considerations as well as the need for judicial economy. As this Court has often recognized, the application of a statute of limitations to a cause of action is justified by necessity and convenience. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945). Application of statutes of limitation to otherwise permissible actions encourages promptness in the bringing of actions so that the parties shall not suffer by the loss of evidence from death or disappearance of witnesses, destruction of evidence, or failure of memory, and serves to spare courts from the litigation of stale claims. *Chase Securities Corp. v. Donaldson*, *supra*; *Missouri K. & T. R. Co. v. Harriman*, 227 U.S. 657 (1913); *Campbell v. Haverhill*, 155 U.S. 610, 617 (1895).

In view of this Court's keen awareness of the important role statutes of limitation play in the judicial process, the Court should appropriately find that those same policies which underlie the imposition of limitation periods in general require the application of appropriate state limitation periods to the EEOC's right to sue.

B. EEOC's Status As An Agency of the United States Should Not Preclude Application of a State Statute of Limitations To Its Right to Sue.

It is to be expected that, despite the considerable precedent in this Court and the lower federal courts supporting the principle that the most analogous state statute of limitations should be applied to those federal rights of action without their own limitation period, the Court will be urged by the EEOC to hold that state statutes of limitation do not run against the United States or its agencies. This argument is predicated upon a line of decisions by this Court involving suits by the United States in its sovereign capacity to collect monies owing to the United States Treasury, or to redress wrongs as to the United States itself or its property, in which the Court held that neither a state statute of limitations nor laches could be asserted against the United States or its agencies. *United States v. Thompson*, 98 U.S. 486 (1879) (United States sued to recover government funds for Indian affairs converted to personal use); *United States v. Nashville, Chattanooga & St. Louis Railway Co.*, 118 U.S. 120 (1886) (United States sued to collect interest payable on bonds which it owned); *Davis v. Corona Coal Co.*, 265 U.S. 219 (1924) (United States sued to recover for damages to property under its control); *United States v. Summerlin*, 310 U.S. 414 (1940) (United States sued to recover its claim against an estate).

There exists, however, an equally strong line of cases which hold that state statutes of limitation *are applicable* to actions by the United States where it has brought suit on behalf of private individuals who could have obtained a determination of their rights by their own action without participation of the United States. *United States v. Beebe*, 127 U.S. 338 (1888); *United States v. Des Moines Navigation & R.R. Co.*, 142 U.S. 510 (1892); *Curtner v. United States*, 149 U.S. 662 (1893). (In these cases

the United States brought suit on behalf of private individuals to cancel patents for land that had been fraudulently obtained from the United States.)

Contrary to the anticipated assertion of the EEOC, the holding of *United States v. Beebe* and its progeny is not subject to distinction on the ground that in those cases the United States brought suit to serve only "private interests", while in the previously cited decisions of this Court finding the United States to be immune from statutes of limitation, the United States was suing to protect a "public interest" or promote public policy as does the EEOC when it brings suit pursuant to Section 706(f)(1). The fallacy of such an alleged distinction is fully demonstrated by this Court's decision in *Beebe*.

In *Beebe*, the Court noted that it was settled law that the United States was entitled to bring suit to enforce a right where it owes an obligation to the public to do so. 127 U.S. at 342; *United States v. San Jacinto Tin Co.*, 125 U.S. 273, 285-286 (1888); *United States v. American Bell Telephone Co.*, 128 U.S. 315, 366-367 (1888). Accordingly, in *Beebe*, this Court declined to overturn the circuit court's rejection of a demurrer to the Government's right to file a bill for annulment of a land patent on behalf of the rightful owners in that the suit fulfilled the Government's obligation to the public to prevent the fraudulent procurement of land patents. 127 U.S. at 343.

Yet, despite this finding that the Government's suit was clearly in the general public interest, the Court affirmed the circuit court's decision to sustain a demurrer to the bill on the ground that suit was barred by the applicable state statute of limitations and laches. The basis of the Court's latter holding was, as previously discussed, that the rights of those persons who principally stood to be benefitted by the Government's suit (the rightful holders of the patents) could have been determined in an action

brought by those persons without the participation of the United States.

"The bill itself was filed in the name of the United States, and signed by the Attorney General on petition of private individuals. *And the right asserted is a private right, which might have been asserted without the intervention of the United States at all.*"

127 U.S. at 346 (emphasis added).

Thus, this Court's decisions fully support the conclusion that appropriate state statutes of limitation are applicable to suit by the United States or its agencies on behalf of private individuals, even where the action of the United States is arguably in the general public interest, if the private individuals could have obtained determination of their rights without the assistance of the United States.

C. The Ninth Circuit Erred in Refusing to Apply the Most Analogous State Statute of Limitations to the EEOC's Right to Sue.

The Ninth Circuit clearly erred in utilizing the above-discussed "public interest" versus "private interest" distinction in reaching its conclusion that the EEOC's right to sue for injunctive and monetary relief was ineliminable. Pursuant to Section 706(f)(1) of Title VII, after the passage of 180 days from the filing of a charge of employment discrimination, a charging party is legally empowered to seek on his own a determination of his rights under Title VII and, potentially, if he satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the rights of other similarly situated individuals. The legal rights of a charging party are not enhanced in any sense if they are pursued by the EEOC on his behalf rather than by the individual himself.

Thus it should be evident that, consistent with this Court's holding in *United States v. Beebe*, the fact the

EEOC can claim that by its prayer for injunctive relief in a suit brought pursuant to Section 706(f)(1) it seeks to promote public policy, should not be determinative of whether the EEOC's right to sue for injunctive relief on behalf of a charging party is subject to a state limitation period. By such a request the EEOC merely seeks to obtain for private individuals prospective protection of the rights to which they are entitled under Title VII. This same protection could be achieved in a suit by the private individuals themselves pursuant to Section 706(f)(1) without the assistance of the EEOC.

Likewise, the recent pronouncements by this Court in *Franks v. Bowman Transp. Co.*¹⁵ and *Albemarle Paper Co. v. Moody*,¹⁶ with regard to the connection between the recovery of backpay in Title VII actions and fulfillment of the public policy of eradicating employment discrimination, do not necessitate the conclusion that state limitation periods are inapplicable to suits by the EEOC for backpay under Section 706(f)(1). Those same pronouncements would equally support the conclusion that all suits pursuant to the Federal Civil Rights Laws for the recovery of backpay owing as a result of employment discrimination serve to promote fulfillment of the public policy of eradicating employment discrimination. Yet the obvious potential for furtherance of that public policy by a recovery of backpay did not deter this Court from finding that a suit by a private individual pursuant to 42 U.S.C. § 1981 to remedy alleged employment discrimination is subject to the most analogous state limitation period. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975).

In the final analysis, a suit by the EEOC to recover backpay seeks to recover for private individuals, rather

¹⁵ — U.S. —, n. 40, 44 USLW 4356, 4365, n. 40 (1976).

¹⁶ 422 U.S. 405, 417 (1975).

than for the United States Treasury, sums due them for violation of their rights under Title VII, even though the private individuals could have sought recovery of these sums without the assistance of the EEOC. Therefore, such a suit by the EEOC is essentially a private action¹⁷ and the fact that the EEOC may somehow also be said to be promoting the public interest by bringing such a suit should not immunize its right to sue for such relief from application of a state limitation period.¹⁸

¹⁷ *EEOC v. Griffin Wheel*, 511 F.2d 456 (5th Cir. 1975). The Chamber, of course, fully supports the Fifth Circuit's conclusion in *Griffin Wheel* that the EEOC's right to sue to recover backpay on behalf of private individuals is subject to the most analogous state limitation period, assuming Section 706(f)(1) is not found to impose a 180 day federal limitation period on EEOC's right to sue. The Chamber submits, however, that the Fifth Circuit erred in not concluding that suit by the EEOC for injunctive relief pursuant to Section 706(f)(1) is also in the nature of a private action to obtain relief which principally benefits the individuals on behalf of whom EEOC brought suit, as opposed to the United States, and that, therefore, EEOC's right to sue for injunctive relief was equally subject to a state limitation period.

¹⁸ This conclusion is not negated by the Ninth Circuit's contention that because the backpay provisions of Title VII are modeled after the National Labor Relations Act ("NLRA") and the right of the National Labor Relations Board ("NLRB") to obtain backpay under that Act has not been found to be subject to state limitation periods, the EEOC's right to sue should also not be limited. The asserted analogy is rendered totally unpersuasive by the substantial differences that exist between the way the rights provided by Title VII and the NLRA are enforced. The NLRB issues its own complaints which are adjudicated by its administrative law judges pursuant to the internal rules of the agency. State limitation periods have never been thought to be applicable to such administrative adjudications. In contrast, to enforce rights under Title VII pursuant to Section 706(f)(1), the EEOC must file a complaint in federal district court, a forum in which application of state law, including state limitation periods, is commonplace. Even more important, however, is the fact that pursuant to the NLRA, private individuals are not entitled to seek a determination of their rights under the Act. Instead they must depend on the NLRB to enforce their rights. Therefore, because a private individual on behalf of whom the NLRB seeks relief could not have his rights determined without the assistance of the NLRB, the

Accordingly, in that the bringing of a suit by the EEOC on behalf of private individuals seeking to obtain for them injunctive and monetary relief does not operate to alter the ultimate determination of the rights to which those individuals are entitled under Title VII, it follows that the Ninth Circuit should have concluded that the EEOC's right to sue was subject to a limitation period (*United States v. Beebe, supra*)¹⁹ in the same manner as if the suit had been brought by the charging party alone. *Clayton v. McDonnell Douglas Corp.*, 419 F. Supp. 28 (C.D. Cal. 1976).²⁰ Consistent with the substantial precedent of this Court that in the absence of a federal limitation period as to a federal right of action an analogous state limitation period should be applied, *supra*, pp. 15-16, and mindful of this Court's statement in *Johnson v. Railway Express Agency, Inc.* that there is nothing "peculiar in a federal civil rights action which would justify special reluctance in applying state law",²¹ the Ninth Circuit erred in not subjecting the EEOC's right to sue to the most analogous state limitation period provided by the law of the State of California.

NLRB's action would not fall within the exception to the immunity of suits by the United States or its agencies from state limitation periods created by *United States v. Beebe, supra*, even if the NLRB did initially pursue its actions for relief in the federal district courts.

¹⁹ Indeed this result is even more compelling than that reached in the cases exemplified by *Beebe, supra*, in that Title VII so fully facilitates the private enforcement of rights by charging parties by providing for court appointed counsel, Section 706(f)(1), and the award of attorneys fees to the prevailing party, Section 706(K), thus serving to ensure that the rights afforded by Title VII do not go unenforced if the United States does not pursue them.

²⁰ The contrary statement of the district court in *Clayton* as to the EEOC's right to sue predicated on the Ninth Circuit's holding in this case would, of course, be invalidated if this Court accepts the foregoing argument.

²¹ 421 U.S. at 462.

CONCLUSION

For the reasons set forth above, it is respectfully requested that this Court must conclude either that EEOC's right to sue pursuant to Section 706(f)(1) is subject to the 180 day limitation period found therein or the most analogous state limitation period.

Respectfully submitted,

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